Mr Justice Davis

Submitted Dec 10

1-206

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~286.~~ 70

DAVID H. MITCHELL, PLAINTIFF IN ERROR,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH, KANSAS, ALEXANDER REPINE, TREASURER, AND THOMAS LEONARD, SHERIFF, OF SAID COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED OCTOBER 18, 1873.

A. 6h. 7

SUPREME COURT OF THE UNITED STATES.

No. 286.

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1 DAVID H. METCHELL
vs.
THE COUNTY BOARD OF LEAVENWORTH COUNTY, Kansas; Alexander Repine, treasu'er of said county, and Thomas Leonard, shereff of said county. } In error.

To the county board of Leavenworth County, Alexander Repine, and Thomas Leonard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein David H. Metchell is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. S. A. Kingman, chief-justice of the supreme court of Kansas, September 9th, A. D. 1873.

S. A. KINGMAN.

2 STATE OF KANSAS,
Leavenworth County, ss:

George H. English, on his oath, states that he served the within cetation upon F. P. Fitzwilliams, who is the attorney of record for the defendants in error in the said cause before the supreme court of the State of Kansas, by delivering to him a true copy thereof on the 9th day of September, A. D. 1873; and also served the same upon L. M. Goddard by delivering to him a true copy thereof on the same day, said Goddard being then and now the county attorney for the county of Leavenworth, State of Kansas; and further saith not.

GEO. H. ENGLISH.

Subscribed and sworn to before me this 8th day of October, A. D. 1873.

[SEAL.] GEORGE FREED,
Notary Public.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Kansas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between David H. Mitchell and the board of county commissioners of Leavenworth, State of Kansas, Alexander Repine, treasurer of said county, and Thomas Leonard, sheriff of said county, wherein was drawn in question the construction of a statute of Congress, and the construction placed upon said statute by said court was in accordance with the claim of plaintiff in error, that United States legal-tender notes are exempt from taxation, but the decision of said court was adverse to the exemption specially set up or claimed under said statute, a manifest error hath happened, to the great damage of the said David H. Mitchell, as by his complaint ap-

4 pears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record

and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States, should be done.

Witness the Hon. Nathan Clifford, presiding justice of the Supreme Court of the United States, the day of October, in the year of our Lord one thousand eight hundred & seventy-three.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed by SAM. F. MILLER,
Asso. Jus. Sup. Court.

OCT. 17, 1873.

5 DAVID H. MITCHELL, PLFF. IN ERROR,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth, State of Kansas; Alexander Repine, treasurer of said county; and Thomas Leonard, shereff of said county.

I, the undersigned, chief-justice of the supreme court of the State of Kansas, do certify that the above entitled cause, whereof the record is hereto attached, was heard and determined before our said court, and that the said cause involves and draws in question the construction of a statute of Congress, and the construction placed upon the statute by the court was in accordance with the claim of plaintiff in error, that United States legal-tender notes are exempt from taxation; but the decision of said cause was adverse to the exemption specially set up by the plaintiff in error.

Witness my hand this 31st day of December, A. D. 1872.

S. A. KINGMAN, *Ch. Justice.*

6 THE STATE OF KANSAS,
Supreme Court, ss:

Be it remembered that heretofore, to wit, on the 19th day of December, A. D. 1871, there was duly filed in the supreme court of the State of Kansas a petition in error and transcript of the record of the district court of Leavenworth County, State of Kansas, in a certain action entitled David H. Mitchell, plaintiff in error, vs. Board of County Commissioners of the County of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thomas Leonard as sheriff of the county of Leavenworth, defendants in error, which said petition in error and transcript are in words and figures as follows, to wit:

7 *Petition in error.*

STATE OF KANSAS, *Supreme Court, ss:*

DAVID H. MITCHELL, PLAINTIFF IN ERROR,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants in error.

And now comes the plaintiff, David H. Mitchell, and complains of the

above-named defendants, for that the said defendants, at the September term of the district court, sitting in and for the county of Leavenworth, State of Kansas, recovered a judgment by the consideration of said court against the said plaintiff in a certain action then pending in said
8 court, wherein this petitioner was plaintiff and the above-named defendants were defendants; a copy of the record of the judgment and proceedings in which case, duly certified, is hereto attached, marked "A," and made a part of this petition, and that this plaintiff avers that there is error in the said record and proceedings, in this, to wit:

I. That on the finding of facts made by the court this plaintiff is entitled to a judgment instead of the defendants.

II. That the court erred in rendering a judgment in favor of the defendants instead of in favor of this plaintiff.

III. That the said judgment was given for the defendants when it ought to have been given for this plaintiff.

IV. That the court erred in finding the conclusions of law against this plaintiff and in favor of the defendants.

9 V. That the facts found by the court entitled the plaintiff to a judgment instead of the defendants.

The said plaintiff therefore prays that the said judgment may be reversed, and the said plaintiff restored to all things he has lost by reason thereof.

PENDERY & GODDARD,
Attys. for Plaintiff.

A.

Be it remembered that heretofore, to wit, on the 10th day of April, A. D. 1871, David H. Mitchell filed in the office of the clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county of Leavenworth, a petition against "The board of county commissioners of the county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thomas
10 Leonard as the sheriff of the county of Leavenworth, which petition is in words and figures following, to wit:

STATE OF KANSAS,
Leavenworth County, ss:

In the district court of the first judicial district of the State of Kansas, sitting in and for the county of Leavenworth.

DAVID H. MITCHELL, PLAINTIFF,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants. } Petition.

The petition of the plaintiff in the cause above entitled respectfully shows to the court that he is now, and has been at all the times
11 herein mentioned, a citizen of the county of Leavenworth, and State of Kansas; that on the first day of March, A. D. 1870, he was the owner of personal property liable to taxation, and liable to be listed and assessed for taxation, in said county to the value of ($4,017)

four thousand and seventeen dollars, and no more. That prior to the 10th day of May, 1870, a person claiming to be the assessor of the township of Delaware, in said county of Leavenworth, left at the place of residence of the plaintiff a written or printed notice, requiring him to make out and hold in readiness for such assessor, after twenty days from the time of leaving said notice, a statement of personal property which by the laws of the State of Kansas he was required to list for taxation in said county for the year A. D. 1870, accompanied with a form in blank that was necessary for such statement, printed upon the
12 same paper.

That said plaintiff, when said notice and blank were so left, did, as required by law, make such statement, by filling out the blanks in said form of the personal property which he was required by law to list for taxation, and then delivered the said statement to the person whom he believed to be the township assessor of Delaware Township, in said county, to wit, to G. W. Starnes, and did, before so delivering the said statement, take and subscribe an oath to the truth of said statement in the manner and as required by the laws of the State of Kansas, before the said G. W. Starnes, assessor, which oath was attached to said statement.

A copy of said notice, form, statement, and oath, all on the same paper, is hereto attached, marked "A," and made a part hereof; that said oath was by said assessor, G. W. Starnes, duly administered,
13 and said statement and form accepted by him as and for a statement of the personal property of the plaintiff liable to taxation for the year A. D. 1870, in the said county of Leavenworth; that said notice was the only notice left by said assessor or by any other person, and the only paper purporting to be such notice left at his place of residence during that year 1870; and said plaintiff avers that in and by said statement the total amount of taxable personal property of this plaintiff liable to taxation for said year 1870 is shown and correctly stated to be the sum of $4,017, and that amount is the full value of all the personal property of this plaintiff liable to taxation or to be listed or assessed for taxes for the year 1870 in said county of Leavenworth; that he has acted in the utmost good faith in the premises, and has no desire to avoid paying his legal taxes; that he did pay to the treasurer of Leavenworth County the full amount assessed upon
14 said sum of $4,017, and has paid all the tax legally assessed against him for the year 1870.

That said defendants, the board of county commissioners of the county of Leavenworth, did, on or about the day of July, 1870, unjustly, illegally, and without any authority of law, increase the assessment of personal property against this plaintiff to a large amount, to wit, to the sum of $9,000, and placed that amount on the assessment-roll, and this plaintiff avers that it was done without his knowledge or consent, and without any notice to him, and without any proof whatever that said plaintiff had a larger amount of personal property liable to taxation for said year of 1870 than the said sum of $4,017, and without any authority of law whatever.

And the plaintiff avers that the amount of his personal property liable to taxation for the year 1870 did not exceed in value the sum of
15 $4,017, and that said list and statement made by him as aforesaid is correct, and he avers that he did not discover such illegal increase of his assessment of personal property until about the day of , when he presented a petition to said defendants, the said

board of county commissioners of the county of Leavenworth, asking that his assessment, so illegally increased, be reduced to the sum of $4,017, which they refuse to do, and they refused to reduce the same at all.

And said plaintiff avers that thereby the amount of tax assessed against him for the year 1870 on personal property has been illegally increased in a large amount, and amounting to a large sum of money, for taxes to said State and county, to wit, the sum of $429.09, besides the cost of collection thereof; that said sum is claimed and assessed upon property that he did not own, and was not liable to be listed for taxation for said year of 1870.

That he has neglected and does refuse to pay the same, for the
16 reason that the same is unjustly and illegally assessed.

And the plaintiff further avers that the defendant, Alexander Repine, who is county treasurer of said county of Leavenworth, as such county treasurer has issued a tax-warrant, by William Shepherd, who is his duly appointed and qualified deputy, under the seal of office, directed to said sheriff of said county, the defendant, Thos. Leonard, commanding him to levy the sum of $429.09, that being the taxes, State and county, and penalty claimed for said year 1870 on the aforesaid unjustly and illegally increased assessment, together with the fees for collecting the same, of the goods and chattels of said plaintiff, David H. Mitchell, and to pay the same to said county treasurer, and return said warrant in sixty days from the date thereof. And the said Thos. Leonard, as such sheriff, threatens to collect and enforce, and is about to enforce,
17 the collection of said illegal tax, charge, and assessment against the said plaintiff.

And plaintiff avers that the said tax of $429.09 is utterly void, and that he is without other adequate remedy than by injunction.

That if said defendant or any of them are permitted to enforce the collection of said illegal taxes, *that* he, the said plaintiff, will suffer irreparable injury thereby.

The said plaintiff therefore prays a judgment against said defendants, that said assessment, taxes, and charges be adjudged illegal and void, and that said defendants, each and all of them, be now temporarily enjoined, and upon the final hearing hereof perpetually enjoined, from collecting or attempting to collect said illegal charge, tax, and assessment, and from any and all proceedings to enforce the same, and for costs of suit, and for all such other and further relief in the premises as the nature of the case may require.

18 DAVID H. MITCHELL,
By PENDERY AND GODDARD,
His Attys.

STATE OF KANSAS,
County of Jefferson, ss:

David H. Mitchell, being first duly sworn, says that he is the plaintiff in the above suit, and the matters and things and averments stated and set forth in the foregoing petition are true.

D. H. MITCHELL.

Subscribed in presence and sworn to before me this 1st day of April, A. D. 1870.

[SEAL.]

C. C. MAST,
Notary Public.

A.—*Statement of personal property in the township of Delaware, and*
19 *county of Leavenworth, in the possession or under the control of D. H. Mitchell, liable to taxation March 1st, 1870.*

	No.	Value.
Horses six months old & over	10	$400 00
Cattle six months old & over	4	65 00
Pleasure carriages of every description	1	150 00
Gold watches	2	100 00
Pianofortes	1	250 00
Mortgages	1	2,902 00
Aggregate value of all other personal property		350,00
		4,217 00
Deduct constitutional exemption		200 00
Total taxable property		4,017 00

STATE OF KANSAS,
County of Leavenworth, ss:

I do solemnly swear that in the above statement I have fully set forth all the personal property which by law I was required to list, either on my own account or in behalf of others, according to the
20 best of my knowledge; and that in deducting the amount of my indebtedness I have included no other than bona-fide indebtedness accruing from actual consideration, and have not exceeded the true amount thereof.

D. H. MITCHELL.

Sworn and subscribed to before me this 16th day of June, 1870.
G. W. STARNES, *Assessor.*

Statement of personal property of David H. Mitchell, Delaware Township, August 29th, 1870, served personally with clerk's original copy.
H. DUNLAP.

Filed June 20th, 1870.
O. DIEFENDORF,
County Clerk.

Precipe.

The clerk will issue summons in the above cause to the coroner of Leavenworth County, returnable according to law.
PENDERY & GODDARD,
Attys. for Plaintiff.

21 Upon the giving of a bond by the plaintiff as required by law, in the sum of $800, let a temporary injunction be granted as prayed for in the above and foregoing petition.
Done at chambers this 4th day of April, 1871.
H. W. IDE,
District Judge.

Which petition is endorsed in words and figures following, to wit: "No. 4643. D. H. Mitchell vs. Board of county commissioners et al. Petition filed April 10th, 1871. Julius Haug, clerk. Pendery & Goddard."

And be it further remembered that on the 29th day of April, A. D. 1871, an answer was filed in said court, in the above-entitled action, which answer is in words and figures following, to wit:

22 STATE OF KANSAS,
Leavenworth County, ss:

n the district court of the first judicial district of the State of Kansas, sitting in and for the county of Leavenworth.

DAVID H. MITCHELL, PLAINTIFF,
agt.
BOARD OF COUNTY COMMISSIONERS OF THE counety of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants.

23 I. The defendants severally answer to the petition that they deny each and every allegation therein contained except as hereinafter admitted.

II. For a second and further answer and defence, and by way of a counter-claim, the defendants each aver and admit plaintiff was the owner of a large amount of personal property on the first day of March, 1870, and during that year prior to the first day of March, 1870, to wit, the sum of $23,269.97.

That this sum was subject to taxation in the township of Delaware, in the county of Leavenworth, and State of Kansas, under the revenue laws thereof, after deducting all legal exemptions for the year 1870.

That residence of the plaintiff was in said township of Delaware on the 1st day of March, 1870.

24 That plaintiff was duly notified prior to the 10th day of May, 1870, by the legally qualified and acting assessor of and for the township of Delaware aforesaid, and by him required to make out and hold in readiness for said assessor his statement of personal property which by law he was required to list for taxation.

That plaintiff made out the statement attached to the petition marked "A," and delivered said statement to the township assessor of Delaware Township and took an oath and subscribed said statement aforesaid before delivering the same.

That said plaintiff fixed the amount for the personal property of and belonging to plaintiff, subject to taxation for the year 1870, at a value of $4,017, after deducting all legal exemptions.

That the assessor of Delaware Township made due return of said statement to the county clerk of Leavenworth County.

That after said return said board of county commissioners of
25 Leavenworth County, and also the county clerk of Leavenworth County, had reason to believe and each were informed that said plaintiff gave to the assessor of Delaware Township as aforesaid a false statement of his personal property, moneys, stocks, credits, &c., which he was required under the law to list for taxation, and that he falsely and willfully underestimated and misstated the value thereof for the false and fraudulent purpose of and fraudulently intending thereby to escape and avoid his just and equitable portion of the tax levied by the authority of law for the year of 1870.

That said board of county commissioners of Leavenworth County, and also the county clerk of Leavenworth County, proceeded to correct the statement of the personal property and the amount and value thereof to a true value.

That to enable the board of county commissioners, and also the county clerk of Leavenworth County to ascertain and make a correct estimate of the amount and value of the personal property of plaintiff,
26 and to place that amount upon the tax-roll of personal property for 1870, compulsory process was duly issued for persons who were acquainted with and knew the personal property, &c., of plaintiff.

That plaintiff, on the 22d day of October, 1870, was required to, and did, appear before the board of county commissioners of Leavenworth County, and also before the clerk of Leavenworth County, at his office, and made further answer touching his personal property, the amount and value thereof; and certain other persons were required to attend before said board and said clerk at the clerk's office on November 19th, 1870, and were examined in relation to the statements of plaintiff, and in relation to their knowledge of the amount and value of plaintiff's personal property for the year 1870; and what personal property plaintiff owned, and had failed and omitted to list, that was subject to taxation for the year 1870.

That said board of commissioners of Leavenworth County, and
27 also said county clerk of said county, considered the evidence adduced before them, and ascertained from the proof that the plaintiff had and was possessed of personal property subject to listing for taxation in the county of Leavenworth, and was liable to be taxed, of the value of and in the sum of $23,269.97.

That it was duly considered and adjudged by said board of county commissioners aforesaid, and also by the said county clerk aforesaid, that the statement returned and made out by said plaintiff and returned to the county clerk aforesaid was false and fraudulent; that plaintiff had in his possession and under his control, subject to be listed for taxation at the time, and charg'able with his portion of the taxes levied for the year 1870, at the time of making his false statement, personal property in the amount of $23,269.97; and this fact the board of county commissioners, and also the county clerk of said county, duly ascertained, upon examination of persons acquainted with the personal
28 property of plaintiff, he had at the time he was required to list the same, and added the sum of $4,983 to the amount listed for plaintiff and returned as aforesaid; that the amount thus added increased the amount of the taxable personal property of plaintiff to $9,000; that this increase and amount was made in order to equalize the burden of taxation.

That plaintiff had on deposit in *in* his name, in the banking-house of Scott & Co., Leavenworth City, $19,252.97 in money, and which amount he owned on the 28th day of February, 1870; and said plaintiff, with the false and fraudulent intent and purpose of defrauding and avoiding the revenue laws of the State, and falsely intending to avoid payment of his portion of the taxes for the year 1870 on his personal property, money, &c., on said 28th day of February, 1870, drew out of said bank the amount of $19,252.97, and retained it until the 3d day of March, 1870, on which day said plaintiff deposited said amount of money
29 in his own name, and to his own credit, in said banking-house of Scott & Co. aforesaid.

That said plaintiff falsely and fraudulently omitted and withheld said

sum of money, or any part thereof, in his statement in listing his personal property, in the return made by him, as before stated, and wholly and falsely neglected and refused to mention and account for the same before the board of county commissioners and before the clerk aforesaid.

That plaintiff had notice from the county clerk that his statement and listing of his personal property had been duly corrected and raised to the aggregate sum of $9,000 in value, and had been duly placed upon the assessment-roll of personal property of the said county of Leavenworth prior to a final settlement being had with the county treasurer of said county for the year 1870, and before the time fixed for collection of taxes for that year.

That the board of county commissioners of Leavenworth County
30 ascertained from the returns of the assessor of the various wards and townships in said county that the taxable property in said county for the year 1870 was, in value, ten millions six hundred thousand dollars, and that valuation *and* determined by the board aforesaid.

That it was duly ascertained and determined that the amount of taxes for State and county purposes to be levied on said property of the county, ascertained as aforesaid, and that was necessary to be levied for the year 1870, should be 40.25 mills on the dollar on said taxable property; and for school purpose' in district No. 10, in Delaware Township, $27 on the taxable personal property of said plaintiff; and that the said county clerk of Leavenworth County duly ascertained and determined the several sums chargeable upon the taxable property aforesaid, and duly apportioned the amount to each person on his personal property, and especially the personal property of plaintiff in his
31 name; and thereafter delivered the assessment-roll to the county treasurer of said county.

That the total amount of taxes for 1870 apportioned, assessed, and charged in the personal property of plaintiff was $429.09.

That plaintiff has failed to pay said sum of $429.09 thereon.

That plaintiff has in*creased* a penalty of 10 per cent. on said amount, and which said said penalty attached to said amount of taxes on the 10th day of January, 1871; and that costs and fees have accrued by reason of the issuing the said tax-warrant, as in the petition stated.

That at the time penalty thereon and accrued costs amounts to the sum of $468.05, which plaintiff has not paid.

Defendants demand judgment that the injunction be dissolved; that defendants recover the sum of $468.05, the amount of taxes, penalty, and costs, from plaintiff, together with 7 per cent. interest from January 1st, 1870, and for such other and further relief as they may be entitled to.

32 F. P. FITZWILLIAM,
County Attorney for Leavenworth County and for Defendants.

Which answer is endorsed in words and figures following, to wit: "No. 4643, D. H. Mitchell ag't County of Leavenworth et. al. Answer filed April 29th, 1871. Julius Haug, clerk, by Geo. E. Haug, D. C."

And be it further remembered that on the 13th day of October, A. D. 1871, a reply was filed in said court, in the above-entitled action, which reply is in words and figures following, to wit:

STATE OF KANSAS, *Leavenworth County, ss:*

In the district court of the first judicial district of the State of Kansas, sitting in and for the county of Leavenworth.

33 *Reply.*

DAVID H. MITCHELL, PLAINTIFF,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants.

And now comes the said plaintiff, and for his reply to the answer of the defendants herein, denies each and every allegation and averment in said answer contained.

PENDERY & GODDARD,
Attorneys for Plaintiff.

Which reply is endorsed in words and figures following, to wit: "No. 4643. D. H. Mitchell vs. Board of County Commissioners of Leavenworth County et al. Reply filed October 13th, 1871. Julius Haug,
34 clerk. Pendery & Goddard, attorneys for plaintiff. I consent to the filing of the reply this 13th day of October, A. D. 1871."

Be it remembered that at the September term, A. D. 1871, of the district court of the first judicial district of the State of Kansas, sitting within and for the county of Leavenworth, begun and held in the city of Leavenworth, commencing on Monday, the 4th day of September, A. D. 1871—Present: the honorable H. W. Ide, judge, Thos. Leonard, sheriff of Leavenworth County, and Julius Haug, clerk—the following proceedings were had, to wit:

35 FRIDAY, *October 13th*, 1871.

DAVID H. MITCHELL, PLAINTIFF,
against
BOARD OF COUNTY COMMISSIONERS OF THE county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants. } No. 4643.

Now, on this day, comes the said plaintiff herein, by Pendery & Goddard, his attorneys, and also come the said defendants herein, by F. P. Fitzwilliam, county attorney of the county of Leavenworth, and thereupon, on application of said plaintiff, it is ordered by the court that leave be, and the same is hereby, given said plaintiff to file his reply herein, which is done.

And thereupon this cause came on for trial by the court, and,
36 with the consent of the parties hereto, by their attorneys, it is ordered by the court that H. C. Hollister, the stenographer of this court, take the testimony herein, and that the costs of the same be taxed with the other costs in this case.

And the said plaintiff requests of the court to state in writing its conclusions of fact herein separately from its conclusions of law.

And the trial of this cause is proceeded with.

And the court, having heard the evidence adduced and the arguments of counsel thereon, holds this case under advisement.

And be it further remembered that, afterwards, at said September term, A. D. 1871, of said court, to wit, on the 14th day of October, A. D. 1871, the following proceedings were had, to wit:

37 SATURDAY, *October 14th, A. D.* 1871.

DAVID A. MITCHELL, PLAINTIFF,
against
BOARD OF COUNTY COMMISSIONERS OF THE county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants. } No. 4643.

Now, on this day, again come the parties hereto, by their respective attorneys as before, and the court, having had this case under advisement and duly considered the same, and having been requested to state in writing its conclusions of fact separately from its conclusions of law, now finds and states the following facts from the evidence in this case:

First. The plaintiff has been a resident and citizen of Delaware
38 Township, in the county of Leavenworth, in this State, for the several years last past.

In June, 1870, the plaintiff made out, subscribed, and swore to, on a blank left with him by the township assessor, a statement of personal property, money, and effects owned by him and liable to taxation in said county for said year, the aggregate value amounting to $4,017, after deducting the amount exempt by law; and on the 20th of the same month the same was duly returned to and filed with the county clerk of said county, and before commencing this action the plaintiff paid the entire tax assessed on said $4,017.

Second. Previous to the first day of March, 1870, the plaintiff for a long time had had a banking account with the house of Scott & Co., in the city of Leavenworth, in this State, and on the 28th day of February, 1870, had on deposit with them $19,350 in current funds belonging to himself, and on that day he gave said house a check for his
39 entire deposits, payable to himself in United States legal-tender Treasury notes, commonly called greenbacks, and the plaintiff then received said amount of said legal-tender notes and enclosed them in a sealed envelope, and immediately returned them, thus sealed up, to the bank, to be kept by it in the vault of the bank; and afterwards, and on the 3d day of March, 1870, the plaintiff deposited all of said money with said bank as a general and ordinary deposit of current funds; none of said sum was included in the statement made as aforesaid to the township assessor.

The funds thus on deposit by the plaintiff were drawn out of the bank as aforesaid, and left on special deposit, and redeposited as aforesaid by the plaintiff for the sole and express purpose of escaping taxation on the funds so belonging to him for the year 1870.

Third. On the 22d day of October, 1870, the plaintiff and other persons were sworn and examined before a committee appointed by the

40 board of county commissioners for the purpose touching and concerning the facts set out in the last-above finding, and a statement was then made, and certified to by the county clerk, of the facts testified to by the plaintiff and each of said persons, and the same was duly filed by said clerk; but the evidence elicited by such examination, and upon which the action in raising the assessment against the plaintiff was based, showed only the several matters and facts stated in number 2 of these findings; and thereupon, on the same day, the amount of the assessment against the plaintiff was increased in the sum of $9,000, and the same was afterwards duly put on the assessment and tax rolls by the county clerk; but before putting the same on said assessment and tax rolls the county clerk gave the plaintiff verbal notice of the raising of the assessment against him.

Fourth. On the 2d day of January, 1871, the plaintiff applied
41 in writing to the board of county commissioners to have said amount of $9,000 so assessed against him stricken off, and the tax levied thereon remitted; but the board refused so to do, and ordered that the action of said committee in so increa*crea*sing the assessment against the plaintiff should stand, and the tax levied thereon be collected.

Fifth. The tax levied on said $9,000, including penalty and costs, amounted to $468.05, none of which has been paid.

Sixth. The treasurer of said county duly issued a tax-warrant to the sheriff of said county for the collection of said tax, and at the time this suit was commenced said sheriff was proceeding in a due manner to execute such tax-warrant.

And, as a conclusion of law, the court finds—

That the plaintiff is not entitled to the remedy sought in this
42 action; that the tax so levied and remaining unpaid is valid and legal, and the defendants, the board of county commissioners of said county, should recover from the plaintiff the amount of said tax, penalty, and costs, amounting to $468.05; and that the temporary injunction heretofore allowed should be dissolved, and all the defendants should recover their costs against the plaintiff.

To which conclusions of law, and each of them, said plaintiff excepts, and gives notice of a motion for a new trial of this action.

And be it further remembered that, afterwards, at said September term, A. D. 1871, of said court, to wit, on the 21st day of October, A. D. 1871, the following proceedings were had, to wit:

43 SATURDAY, *October 21st, A. D.* 1871.

DAVID H. MITCHELL, PLAINTIFF,
against
BOARD OF COUNTY COMMISSIONERS OF THE county of Leavenworth, Alexander Repine as treasurer of the county of Leavenworth, and Thos. Leonard as the sheriff of the county of Leavenworth, defendants. } No. 4643.

Now, on this day, comes the said plaintiff herein, by Pendery and Goddard, his attorneys, and also come the said defendants herein, by F. P. Fitzwilliam, their attorney, and it appearing to the court that more than three days have elapsed since filing and entering of the special findings of the court in this case, and that no motion for a new

trial has been filed herein, this cause comes on for hearing upon
44 the pleadings and conclusions of fact and of law in this case, on consideration whereof it is now by the court here considered, ordered, and adjudged that the said defendants, board of county commissioners of the county of Leavenworth, have and recover of and from the said plaintiff the sum of four hundred and sixty-eight dollars and five cents, ($468.05,) that being the amount heretofore found by the court to be due from said plaintiff to said defendants; that the temporary restraining order heretofore made herein be, and the same is hereby, vacated and set aside, and that all of said defendants herein have and recover of and from the said plaintiff all their costs by them in and about this suit expended, taxed at $, and that execution issue therefor.

To which rendering of said judgment the plaintiff excepts.

45 STATE OF KANSAS,
County of Leavenworth, ss:

I, Julius Haug, clerk of the district court of the first judicial district of the State of Kansas, sitting in and for the county of Leavenworth, do hereby certify the above and foregoing to be a true, full, and complete copy of all pleadings and endorsements thereon, and of all the proceedings in said action as the same appear on file and of record in my office.

In witness whereof I have hereunto set my hand and affix the seal of said court, at the office in the city of Leavenworth, this the 16th day of November, A. D. 1871.

[SEAL.] JULIUS HAUG,
Clerk of said Court.

46 Which petition in error and transcript is endorsed in words and figures following, to wit: "No. 806. Supreme court, State of Kansas. D. H. Mitchell vs. Leavenworth Co. coms. et al. Petition in error & transcript. Filed Dec. 19th, 1871. A. Hammatt, clerk supreme court."

47 And said petition in error is further endorsed, showing a waiver of service of summons and an appearance entered in said supreme court, in words and figures as follows, to wit:

"Service of summons waived and appearance entered for defendants.
"F. P. FITZWILLIAM,
"*Atty. for Defts.*"

And said petition in error is further endorsed in words and figures following, to wit:

"I hereby become security for costs in this cause.
"Dec. 19th, 1871.
"CHAS. MONROE."

48 Be it remembered that, at the January term, 1872, of the said supreme court, State of Kansas, holden at the city of Topeka, in said State, commencing on the 2d day of January, 1872, there were present Hon. S. A. Kingman, ch. justice, Hon. D. M. Valentine & Hon. D. J. Brewer, associate justices, and A. Hammatt, clerk.

And thereafter, to wit, upon the 3d day of January, 1872, it being the 2d judicial day of said term of said court, the following proceedings

were had in said cause, as appears by the records of said court, and upon Journal "C," page 348, to wit:

49 [Journal "C," p. 348.]

DAVID H. MITCHELL
vs.
CO. COMS. OF LEAVENWORTH COUNTY ET ALS. } 806.

This cause came on to be heard on petition in error and transcript of the record of the district court of Leavenworth County, and was argued by John L. Pendery, esq., of counsel for plaintiff in error, and by F. P. Fitzwilliam, esq., of counsel for defendants in error, and taken under advisement by the court. Brewer, J., not sitting in this case.

And be it further remembered that, thereafter, and at the same (January, 1872,) term of said court, and upon the 15th day of May, 1872, the following proceedings were had in said cause in said court, as appears by the records of said court and in Journal "D," page 35, to wit

50 [Journal "D," p. 35.]

DAVID H. MITCHELL
vs.
BOARD OF COUNTY COMMISSIONERS OF Leavenworth County et als. } 806.

This cause came on for decision, whereupon Kingman, ch. justice, delivered the opinion of the court; and it is ordered and adjudged that the judgment of the court below be affirmed with costs, and hereof let execution issue.

Valentine, J., concurring.

Brewer, J., not sitting in the case.

And thereupon the opinion of said court, above mentioned, was delivered in words and figures as follows, to wit:

51 DAVID H. MITCHELL
v.
BOARD OF COUNTY COMMR'S OF LEAVenworth County et al. } Error from Leavenworth Co. Affirmed.

By the court, KINGMAN, *C. J.:*

On the 28th day of February, 1870, the plaintiff in error had a large amount of money in current funds on deposit with Scott & Co., bankers, of Leavenworth. On that day he gave the bank a check, payable to himself in legal-tender Treasury notes, enclosed them in a sealed envelope, and immediately returned them, thus sealed up, to the bank, and three days afterwards deposited all of said money as a general and ordinary deposite of current funds. The whole transaction was for the sole and express of escaping taxation on the funds so used for the year 1870.

Did he by this transaction so place his property as to relieve it
52 from the burthens of taxation; and is he in a situation in which he can invoke the aid of a court to restrain the taxes levied upon those funds?

It is conceded that United States legal-tender notes are exempt from taxation.

It is also conceded that the transaction by plaintiff in error is one not in contravention of law of itself; but it is contended that, the motive being to defraud the Government of its just dues, and enable the plaintiff to escape the just burthens that society imposes on him, enters into and vitiates the whole transaction, and that a court of justice, sitting as a court of equity, will not lend its aid for the accomplishment of any such purpose; and we think the argument a good one.

Reference is made to the principles stated in the brief of defendant in error, and the authorities cited to sustain them.

The judgment is affirmed.

53 And thereupon the mandate of the supreme court to said district court of Leavenworth County was issued; which said mandate is in words & figures as follows, to wit:

54 SUPREME COURT,
The State of Kansas, ss:

To the district court within and for the first judicial district, Leavenworth County, Kansas, greeting:

Whereas in a certain civil action lately pending before you, wherein David H. Mitchell was plaintiff, and board of county commissioners of Leavenworth County et als. were defendants, a judgment was rendered by you in favor of the said board of county com's et als., on a transcript of which judgment and record said David H. Mitchell prosecuted a petition in error in the supreme court within and for the State of Kansas;

And whereas at the January term of said supreme court, A. D. 1872, on consideration of the said petition in error, it was ordered and adjudged by the said supreme court that the said judgment of the court below be affirmed with costs:

You are therefore commanded that, without delay, you cause execution to be had of the said judgment of the supreme court, according to law, the said petition in error to the contrary notwithstanding.

Witness my hand and the seal of said supreme court affixed, at my office in the city of Topeka, on the 15th day of May, A. D. 1872.

[SEAL.] (Signed) A. HAMMATT, *Clerk.*

55 THE STATE OF KANSAS,
Supreme Court, ss:

I, Abram Hammatt, clerk of the supreme court of the State of Kansas, do hereby certify that the foregoing is a true, correct, and complete transcript of all papers, pleadings, proceedings, and records in the case as therein entitled, as the same appear on file or of record in my office.

Witness my hand and official seal hereto affixed, at my office in Topeka, Kansas, this December 26th, 1872.

[SEAL.] A. HAMMATT,
Clerk Supreme Court State of Kansas.

(Indorsement on cover:) No. 286. David H. Mitchell, plaintiff in error, vs. The Board of County Commissioners of Leavenworth, Kansas, Alex. Repine, treasurer, & Thomas Leonard, sheriff, of said county. Kansas sup. ct. Filed 18 October, 1873.

UNITED STATES
SUPREME COURT.

No. ~~386~~ 70

DAVID H. MITCHELL,
Plaintiff in Error.

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH CO., et. al.
Defendants in Error.

ARGUMENT OF PLAINTIFF IN ERROR.

R. M. CORWINE & SON,
and J. W. ENGLISH,
Atty's for Plaintiff in Error.

UNITED STATES

SUPREME COURT.

No. 386.

DAVID H. MITCHELL,
Plaintiff in Error.

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH CO., et. al.
Defendants in Error.

ARGUMENT OF PLAINTIFF IN ERROR.

This cause is reported, 9th Kansas, 344, which states in full the findings of facts by the Court, and the Statute of Kansas on which the cause originated is to be found—

Gen. Stat. of Kansas, 1864.
Ch. 107, Sec. 11, page 1024.

Its language is: "all property to be listed shall be listed as on the 1st day of March in the year which the same is assessed."

Under this law the object and intention is to assess such property as was owned by the citizen *liable to taxation* on the 1st day of March of the year of his assessment.

The finding of the fact shows that on the 1st day of March, David H. Mitchell had on special deposit at Scott & Co.'s Bank, in the city of Leavenworth, Kansas, $19,350.00 in United States Treasury Notes, of which the County Assessor put on the assessment list, and caused the taxes to be extended against it, without the consent of Mitchell, to the extent of $9,000.00.

The only question presented is, is this assessment of the money in question legal?

The Act of Congress (for convenience to be found) Rev. St. U. S., Sec. 3701, provides that Treasury Notes shall be exempt from taxation.

The proceedings of the County officers is an attempt to evade the express language of the Act of Congress.

Can it be material what was the motive of Mitchell in getting his money converted into Treasury Notes.

The Statute of Kansas only authorized the taxation of such property as he had on the 1st day of March, and the proof shows the money by him possessed on that day was of a character that by law could not be taxed.

The opinion of the Supreme Court of Kansas concedes that Mitchell violated no law in making the arrangement he did,—if this is true we cannot consider the reason stated by Mr. C. J. Kingman as good logic or good law.

The only fact to be inquired into by the Assessor is as to what property Mitchell had when the law fixed the time for assessment, to-wit: March 1st of the year in question. He had money. One of the shapes in which money is issued is United States Treasury Notes. Is it a fraud to have or own Treasury Notes? If not illegal to own them, what right has the Assessor to say, true, you had on the 1st of March Treasury Notes, but the day before your money was in the shape of *current funds*, therefore I will assess it, as it was February 28th.

Current funds may or may not be *Treasury Notes.* How is he to determine what of his current funds was Treasury Notes, and what was not? And if he, under this law of Kansas, could assess as to the condition of the money of Mitchell at 28th of February, or the 3rd of March, why could he not do the same thing at any other date, and thus disregard the law altogether? A Tax law should, we think, be strictly construed, and such a ruling ought not to be sustained.

The presumption is, that Scott & Co listed their taxable property,—if they did, they have been taxed on this money exchanged by Mitchell to them—and if the assessment stands against Mitchell then the Assessor has twice assessed the same money; first as against Scott & Co., and second against Mitchell; so that even upon the theory of the Supreme Court of Kansas this assessment is unjust.

R. M. CORWIN & SON,
and J. W. ENGLISH,
Atty's for Plaintiff in Error.

Supreme Court of the United States.

DAVID H. MITCHELL

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH COUNTY *et al.*

No. ~~286~~ 70

ADDITIONAL BRIEF.

But there is another reason why this additional taxation was unlawful.

The object of all taxation is to compel lawfully taxable property of every kind to contribute its just proportion of taxes to the State. It must, however, on the proper day of assessment, have an actual *bona fide* existence as such, so that the law of the State may attach to and hold it.

It is the specific property which is the object matter of taxation, and, if there is no such property *on that day*, there is no right of taxation. And it is also the duty of the citizen to return only lawfully taxable property.

If he has none of that description on the day he is required to make his return, then he has discharged his whole duty to the State when he makes his return not embracing such non-existent property. In this view of the law and the duty of the citizen, how does this case stand?

Mitchell converted some thousands of dollars of his own money into *legal tender notes*, and made a special deposit of them with his banker. That he had the lawful right to do this is conceded. The money belonged to him, and he had sole dominion over it, to do with it what he pleased. He did not choose to pay taxes on it, for what reason we do not

know, whether because it was not paying him interest or not does not appear and it is not material.

The fact is this: That before the day of taxation he converted it into legal tender notes, and held them on that day as his own and exclusive property. That was his right. Now, these notes were not liable to taxation in any respect nor on any account, and no act of the assessing officer could make them so.

The allegation is, that the motive, confessedly, was to take them out of the category of taxable property. Granted. Was not that his legal right? The money was his own. He could change it into whatever securities he might elect, in United States bonds, in legal tender notes, or in mortgage paper. He could change his investment at his pleasure.

The question here is not what was his motive in making the investment, but what was the character of that investment on the day of his tax return with respect to its liability or non-liability to pay taxes to the State.

His right to make the investment cannot be questioned.

Having once made the investment, the funds invested were beyond the taxing power of the State, and it was illegal and wholly without warrant of law to assess that fund thus invested. It was not liable to taxation, because Congress had declared that such securities were free from taxation.

R. M. CORWINE,
J. W. ENGLISH,
QUINTON CORWINE.
Attorneys for Plaintiffs in Error.